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10/534,988	05/16/2005	Lasse Leino	OHMAN-002	1914
32954	7590	02/24/2009	EXAMINER	
JAMES C. LYDON 100 DANGERFIELD ROAD SUITE 100 ALEXANDRIA, VA 22314			SIMMONS, CHRIS E	
ART UNIT		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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FEB 24 2009

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ALEXANDRIA VA 22314

In re Application of :  
Leino et al. :  
Serial No.: 10/534,988 : PETITION DECISION  
Filed: May 16, 2005 :  
Attorney Docket No.: OHMAN-002 :  
:

This is in response to the petition filed January 30, 2009 under 37 CFR § 1.181, requesting that the finality of the Office action of December 1, 2008 be withdrawn.

#### BACKGROUND

More recently, the examiner mailed a final Office action on May 2, 2008. In this action, the examiner rejected claims 16, 19-22, and 28-30 under 35 U.S.C. 103(a) as unpatentable over USP 5,494,676 in view of WO 02/07520. Claims 16, 19-22, and 28-30 were rejected under 35 USC 103(a) as being unpatentable over Ben-Basset et al. in view of WO 02/07520. Claims 16, 19-22, and 28-30 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting over copending application No. 11/408,056 in view of Granstein Psoriasis. Claims 16, 19-22, and 28-30 were also provisionally rejected on the ground of nonstatutory obviousness-type double patenting over copending application No. 10/565,202 in view of Granstein Psoriasis.

On September 2, 2008, applicant filed a Request for Continued Examination (RCE) along with the appropriate fees. In this RCE, applicant specifically fulfilled the requirements of 37 C.F.R. § 1.114 (submission) by indicating that the submission was filed on September 2, 2008 and that said submission, containing claim amendments was to be considered for examination.

On December 1, 2008, the examiner mailed a final Office action setting a three month statutory limit for reply. In this action, the examiner rejected claims 16, 19-22, and 28-30 under 35 U.S.C. 103(a) as unpatentable over USP 5,494,676 in view of WO 02/07520. Claims 16, 19-22, and 28-30 were rejected under 35 USC 103(a) as being unpatentable over Ben-Basset et al. in view of WO 02/07520. Claims 16, 19-22, and 28-30 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting over copending application No. 11/408,056 in view of Granstein Psoriasis.

In response thereto, applicants filed this petition on January 30, 2009 under 37 CFR § 1.181, requesting that the finality of the Office action of December 1, 2008 be withdrawn.

## DISCUSSION

The petition and the file history have been carefully considered.

In the petition filed on January 30, 2009, applicants argue that the final Office action instituted by the Examiner on December 1, 2008 was improper and should be withdrawn because MPEP § 706.07(b) does not apply to this situation, and clear issues have not yet been developed between the examiner and the applicants.

To support these contentions, applicants argue that "MPEP 706.07(b) permits an examiner to finally reject an application immediately after the filing of an RCE only in the situation where the claims were not amended, i.e. where all of the claims in the application after entry of the submission under 37 C.F.R. § 1.114(a) are drawn to the same invention claimed in the application prior to entry of the submission under 37 C.F.R. § 1.114". Applicants then point out that all of the claims in the instant application after entry of the amendment are drawn to a different invention than that claimed in the application prior to entry of the amendment and that MPEP § 706.07(b) is simply not applicable in the instant application. This point is not persuasive as the limitation added to the claim is an inherent property of the composition. Thus, it is proper to finally reject the claims in the action immediately subsequent to the filing of the RCE since the claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and would have been properly finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to the filing of the RCE as set forth in MPEP§ 706.07(b).

Applicants further argue that no clear issue has been developed between the examiner and the applicants. Again, this is not agreed with as the rejections set forth in the final Office action of December 1, 2008 were maintained from the previous Office action of May 2, 2008 and therefore, the examiner's position is deemed clear.

Accordingly, applicants' arguments are not found persuasive that the final Office action issued December 1, 2008 was premature and, therefore, finality of the Office action will not be withdrawn.

## **DECISION**

The petition is **DENIED**.

This application will be forwarded to the examiner for an action not inconsistent with this decision.

Should there be any questions about this decision please contact Marianne C. Seidel, by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile sent to the general Office facsimile number, 703-872-9306.



Andrew Wang  
Acting Director, Technology Center 1600